

REMARKS

Rejections under 35 U.S.C. § 103

Claims 1-11 were rejected under 35 U.S.C. §103 as allegedly obvious over Pomper *et al.* (WO2005/000250, hereafter “Pomper”). Applicants respectfully traverse.

35 U.S.C. §103(c) states that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Furthermore, MPEP §706.02(I)(2) states that “[a]pplications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. See "Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. 103(c)," 1241 O.G. 96 (December 26, 2000).”

The Examiner acknowledged on page 4 of the Office Action dated July 12, 2010 that the applied reference has a common inventor with the instant application and that it constitutes prior art only under 35 U.S.C. 102(e). Applicants submit herewith a statement by an attorney of record indicating that the present application and Pomper (International Application No. PCT/US2004/020530) were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, AstraZeneca AB. Therefore the rejection is moot. Reconsideration and withdrawal of the rejection is respectfully requested.

Double Patenting

The Examiner provisionally rejected claims 1-11 on the ground of nonstatutory

obviousness-type double patenting over claims 12 and 19 of Application No. 12/321,951. Applicants respectfully disagree. Nonetheless, in order to expedite prosecution, Applicants submit herewith a Terminal Disclaimer. Accordingly, the rejection is moot. Withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the above remarks and amendments, Applicants respectfully request withdrawal of the rejections and allowance of the claims. If any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number given below.

This response is filed within the three-month period for response from the mailing of the Office Communication pursuant to 37 CFR § 1.7(a). No fee is believed due. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 15652-04303-US from which the undersigned is authorized to draw.

Respectfully submitted,

By /Joseph A. Ciardi/
Joseph A. Ciardi, Ph.D.

Registration No.: 64,760
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P. O. Box 2207
Wilmington, Delaware 19899-2207
(302) 252-3628
(302) 658-5614 (Fax)
Agent for Applicants

#981234